STATE OF MICHIGAN

COURT OF APPEALS

JOHN H. UNDERHILL,

Plaintiff-Appellant,

v

KAREN S. UNDERHILL,

Defendant-Appellee.

UNPUBLISHED
May 22, 2007

No. 274126
Cheboygan Circuit Court
LC No. 05-007497-CZ

Before: White, P.J., and Saad and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment granting defendant's motion for summary disposition. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This case arises out of the construction of a garage addition on defendant's property in Cheboygan. Plaintiff and defendant were married for a short period of time in the early 1990's and began dating again in approximately 2001. The parties also began to cohabitate with each other between their residences—plaintiff's in Sault Ste. Marie and defendant's in Cheboygan. In 2003, defendant purchased the property at issue, and she and plaintiff lived there together. The parties then had a child. In the fall of 2004, plaintiff hired builders to construct a detached garage on defendant's property. The addition was to be used primarily as a law office for plaintiff. Approximately six or seven months after the garage was completed, the parties' relationship ended and plaintiff moved out.

Subsequently, plaintiff filed a complaint, alleging that he paid for the garage addition from his personal funds and seeking reimbursement equivalent to the value of this improvement to defendant's property. Plaintiff originally claimed damages under a theory of unjust enrichment, but amended his complaint to allege breach of an express or implied contract. Both parties moved for summary disposition. The trial court concluded that no agreement regarding reimbursement for the garage addition existed between the parties and granted summary disposition in favor of defendant.

We review a trial court's ruling on a motion for summary disposition de novo. *MacDonald v PKT, Inc*, 464 Mich 322, 332; 628 NW2d 33 (2001). A motion under MCR 2.116(C)(10) tests the factual support for a plaintiff's claim. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). "In reviewing a motion for summary disposition brought

under MCR 2.116(C)(10), we consider the affidavits, pleadings, depositions, admissions, or any other documentary evidence submitted in a light most favorable to the nonmoving party to decide whether a genuine issue of material fact exists." *Singer v American States Ins*, 245 Mich App 370, 374; 631 NW2d 34 (2001). A genuine issue of material fact exists where the record leaves open an issue on which reasonable minds could differ. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

On appeal, plaintiff argues that the trial court improperly granted summary disposition in favor of defendant without first considering the allegations in his amended complaint regarding the existence of an implied agreement between the parties and allowing further discovery of those allegations. We disagree.

First, the record does not support plaintiff's contention that the trial court failed to consider the allegations in his amended complaint. The trial court correctly concluded that plaintiff's claim based on the legal theory of unjust enrichment was improper under the circumstances. See *Featherston v Steinhoff*, 226 Mich App 584, 588; 575 NW2d 6 (1997) (holding that, where a meretricious relationship exists, recovery based on contracts implied-in-law or quantum meruit is not permitted because "to do so would essentially resurrect common-law marriage."). Therefore, the trial court allowed plaintiff to amend his complaint to allege the existence of an enforceable agreement between the parties. Plaintiff then amended his complaint, alleging that the parties had an express or implied agreement whereby he was entitled to repayment for funding the construction of the garage addition. Specifically, plaintiff claimed the parties had agreed to share in the benefits and any appreciation resulting from the construction of the garage on defendant's property. Plaintiff also asserted that defendant had promised to add his name to the deed for the property but never did and that she wrote him a letter promising to repay him for the garage addition. At the summary disposition hearing, the trial court considered the existence of an express or implied-in-fact agreement between the parties and found that no such agreement existed. Therefore, the trial court clearly addressed the substance of the allegations in plaintiff's amended complaint. Plaintiff's argument in this regard lacks merit.

Next, the trial court's grant of summary disposition in favor of defendant was proper. Michigan courts have held that those involved in meretricious relationships "do not enjoy property rights afforded a legally married couple." *Featherston*, *supra* at 588; see also *Roznowski v Bozyk*, 73 Mich App 405, 408; 251 NW2d 606 (1977); *Tyranski v Piggins*, 44 Mich App 570, 573; 205 NW2d 595 (1973). Instead, a legal presumption exists that benefits conferred when the parties are involved in a meretricious relationship are deemed gratuitous. *In re McKim Estate*, 238 Mich App 453, 461; 606 NW2d 30 (1999); *In re Morris Estate*, 193 Mich App 579, 582; 484 NW2d 755 (1992). This presumption is rebutted when the claim is based on either an express agreement or an implied-in-fact contract that is supported by independent consideration. *Featherston*, *supra* at 588. An implied-in-fact contract exists when the party conferring the benefit expected to receive compensation and the beneficiary expected to provide the compensation. *In re McKim Estate*, *supra* at 458; *In re Morris Estate*, *supra* at 582. Relevant factors to consider in determining the existence of an implied-in-fact contract include "the type of services rendered, the duration of the services, the closeness of the relationship of the parties, and the express expectations of the parties." *In re McKim Estate*, *supra* at 458 (citation omitted).

Given the relationship that existed between plaintiff and defendant, the presumption arises that the benefits conferred by plaintiff were rendered gratuitously. This presumption was not rebutted. At his deposition, plaintiff testified as follows:

> *Q.* Did you and Karen have any agreement with regards to the garage and how it would be handled upon your divorce - - excuse me - - upon your separation?
>
> *A.* *I don't think we ever talked about the what ifs*.
>
> *Q.* Okay.
>
> *A.* I know at one point . . . Karen told me she was going to - - I don't know if she ever did - - put my name on the property for purposes of estate planning so, if something happened to her, the place would go to me, at least the equity. But whether she did it or not, I don't know. *But we never had a discussion about what happens if we separate and what happens to the garage*, if that's your question. [Emphasis added.]

Similarly, defendant testified to the following:

> *Q.* Did you and Mr. Underhill ever have any discussions prior to or during your romantic relationship stating that he was to be compensated in the event you guys separated regarding the garage?
>
> *A.* What I'm understanding you to say is some sort of a prenuptial or a pre-closure agreement that - -
>
> *Q.* *Did you ever have any discussions?*
>
> *A.* *Never. Never.*
>
> *Q.* *Did you ever have an agreement?*
>
> *A.* *Never had an agreement.*
>
> *Q.* So there was no agreement as to what was going to happen to the garage should you two part ways?
>
> *A.* I would have never agreed to have it constructed on my property under those terms. Never. [Emphasis added.]
>
> * * *
>
> *Q.* Okay. Just a second here. And I guess just to make sure it's clear, there was never an agreement for you guys to compensate Mr. Underhill in any way with regards to the garage - -
>
> *A.* Should we - -

Q. - - should you guys separate or anything?

A. Absolutely not. Never talked about separating ever.

Although plaintiff claimed defendant intended to add him as a titleholder to the property, he specifically denied there was any discussion pertaining to the garage addition and what should happen to the garage if the parties should separate. Defendant's testimony confirmed that the parties never had a discussion or agreement regarding compensating plaintiff for his actions relating to the garage. The parties expectations preclude a finding that an implied-in-fact contract existed. See *In re McKim Estate*, *supra* at 458; *In re Morris Estate*, *supra* at 582. Furthermore, the letter that defendant wrote to plaintiff indicating her willingness to repay him for his contributions was executed after the addition was complete, and there was no independent consideration for that promise. See *Featherston*, *supra* at 588. Therefore, no evidence existed establishing that both parties expected plaintiff to be compensated for his actions with regard to the garage addition at the time of its construction. See *In re McKim Estate*, *supra* at 458; *In re Morris Estate*, *supra* at 582. In light of the evidence before it, we hold that the trial court did not err in concluding that an enforceable contract did not exist between the parties and in granting summary disposition in favor of defendant.

Further, we reject plaintiff's argument that the trial court erred in allowing defendant's summary disposition motion to go forward before discovery on the new allegations was complete. Summary disposition may be appropriate before discovery is complete if further discovery does not stand a reasonable chance of uncovering factual support for the opposing party's position. *Village of Dimondale v Grable*, 240 Mich App 553, 566; 618 NW2d 23 (2000). The survival of plaintiff's claim depended solely on the existence of an enforceable agreement. Because the evidence established there was no mutual expectation that plaintiff would be compensated for his contribution, further discovery would have been futile. See *In re McKim Estate*, *supra* at 458; *In re Morris Estate*, *supra* at 582.

Affirmed.

/s/ Helene N. White
/s/ Henry William Saad
/s/ Christopher M. Murray